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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/622,993	07/18/2003	Henry Welling Lane	DIOP-02602	3051

34209 7590 03/15/2004

LAW OFFICE OF DEREK J. WESTBERG
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EXAMINER

NERBUN, PETER P

ART UNIT PAPER NUMBER

3765

DATE MAILED: 03/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/622,993	LANE ET AL.	
	Examiner	Art Unit	
	Peter P Nerbun	3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 7-10 and 23-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 7-10 and 23-37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>10/20/03, 11/25/03</u> . | 6) <input type="checkbox"/> Other: _____ |

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 7-10 and 23-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith (U.S.P. 3,377,626) or Carroll (U.S.P. 4,571,748) in view of Tee, Jr. (U.S.P. 5,416,536). The patent to Smith discloses an apparatus for shielding a user's eye while allowing the user's eye contact with air, the apparatus comprising a frameless eyeshield 17, 42, Fig. 8 and a cushioning structure 43, 44 affixed to at least a portion of the perimeter of the eyeshield wherein the cushioning structure includes a plurality of vents formed by holes in the cushioning structure for allowing air to circulate behind the eyeshield (see col. 2, lines 66-70). The patent to Carroll discloses an apparatus for shielding a user's eye while allowing the user's eye contact with air, the apparatus comprising a frameless eyeshield 16, 18, Fig. 4 and a cushioning structure 14 affixed to at least a portion of the perimeter of the eyeshield wherein the cushioning structure includes a plurality of vents formed by holes in the cushioning structure for allowing air to circulate behind the eyeshield (see col. 3, lines 63-65 which state that the cushioning material is formed of open cell foam) Open cell foam is well known by one having ordinary skill in the art to have multiple holes therein which would permit air to circulate therethrough. To construct the eye shielding apparatus of Smith or Carroll with an optically correct viewing area in the eye shield as suggested by Tee,

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Jr. (at col. 9, lines 5-7) would have been obvious since a portion of the wearer's visual field would be free from distortion thereby enabling more capable vision.

Claims 26-29 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shipcott (cited on PTO-1449, paper no. 10/20/2003) in view of Tee, Jr. The patent to Shipcott discloses an apparatus for shielding a user's eye while allowing the user's eye contact with air, the apparatus comprising an eyeshield 12, Fig. 1 and a cushioning structure 24, 28 affixed to at least a portion of the perimeter of the eyeshield wherein the cushioning structure includes a plurality of vents (at 26) for allowing air to circulate behind the eyeshield and wherein at least a nose-bridge portion of the cushioning structure is affixed to a single surface of the eyeshield. To construct the eye shielding apparatus of Smith or Carroll with an optically correct viewing area in the eye shield as suggested by Tee, Jr. (at col. 9, lines 5-7) would have been obvious since a portion of the wearer's visual field would be free from distortion thereby enabling more capable vision.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter P Nerbun whose telephone number is 703-308-0955. The examiner can normally be reached on M-F (1st Week) M-Th (2d Week).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John J Calvert can be reached on 703-305-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Peter Nerbun
March 8, 2004

A handwritten signature in black ink, reading "Peter Nerbun". The signature is fluid and cursive, with the first name "Peter" and last name "Nerbun" clearly distinguishable.

Peter Nerbun
Primary Examiner